



**IN THE COURT OF APPEAL**

**AT NAIROBI**

**(CORAM: D.K. MUSINGA, J.A.)**

**CIVIL APPLICATION NO. 105 OF 2019**

**BETWEEN**

**DICKSON MZUNGU.....APPLICANT**

**AND**

**OKWARO J.L. LOROI.....RESPONDENT**

*(An application to file and serve a Notice of Appeal out of time from the judgment of the*

*Employment and Labour Relations Court at Nairobi (Abuodha Jorum Nelson, J.)*

*dated 30th November 2018*

**in**

**E.L.R.C. Case No.1348 of 2014)**

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**RULING**

1. The applicant's application seeks leave to file and serve a notice of appeal out of time, in respect of the judgment of **Abuodha, J.** delivered on 30th November 2018 in Employment and Labour Relations Court (ELRC) **Case Number 1348 of 2014**.
2. In his affidavit in support of the application, the applicant stated that the judgment in the aforesaid case was scheduled to be delivered on 27th November 2018; on that day the trial court did not sit and parties were informed that the judgment would be delivered on notice; but unknown to the applicant, the judgment was delivered on 30th November, 2018 without any notice to him.
3. The applicant further deposed that on 4th March 2019 the respondent personally telephoned him and demanded payment of the judgment sum, Kshs.60,000.
4. On 5th March 2019 the applicant's advocate, having been notified by the applicant that the judgment had long been delivered, applied for certified copies of the proceedings and judgment, which were supplied on 19th March 2019. The applicant's counsel submitted that the applicant's intended appeal has good chances of success; that the application was made without undue delay; and that the respondent will not be prejudiced if the application is granted.
5. The respondent though duly served with the application on 25th June 2020 did not file a replying affidavit.
6. The principles that this Court considers in an application of this nature are well settled. In ***Leo Sila Mutiso v Rose Hellen Wangare Mwangi, Civil Application No. NAI 255 of 1977***, this Court stated: -

***"It is now well settled that the decision whether or not to extend time for appealing is essentially discretionary. It is also well settled that in general, the matters which this Court takes into account in deciding whether or not to grant extension of time are; first, the length of the delay; secondly, the reason for the delay; thirdly, (possibly), the chances of the appeal succeeding if the application is granted; fourthly, the degree of prejudice to the respondent if the application is granted."***

7. Taking into account the above principles, I find that there was no inordinate delay in filing the application, considering that the applicant was not given notice of delivery of the impugned judgment and that he sought for the judgment and proceedings a day after he learnt of its delivery, and filed the application a few days upon receipt of the requested documents.

8. As regards the chances of success of the intended appeal, the applicant argued that the learned judge failed to consider the full facts placed before him and other pertinent issues.

I have also perused the impugned judgment and I am satisfied that the intended appeal is arguable.

9. The respondent shall not suffer any prejudice if this application is granted. On the other hand, unless the application is allowed, the applicant will have been denied his constitutional right of appeal for no fault on his part.

10. Consequently, I hereby allow the application and direct that the notice of appeal be filed and served within **seven (7) days** from the date of delivery of this ruling. The costs of the application shall abide the outcome of the appeal.

**Dated and delivered at Nairobi this 7<sup>th</sup> day of August, 2020**

**D.K. MUSINGA**

.....

**JUDGE OF APPEAL**

*I certify that this is a true copy of the original.*

*Signed*

**DEPUTY REGISTRAR**